REMARKS/ARGUMENTS

The Office Action dated October 26, 2006, has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested. Claims 3-11, 13-21 and 23 are pending in this application.

Claims 3-11, 13-21, and 23 now stand rejected under 35 USC 102(a) as anticipated by Kiel (2003/0027549).

The present claims are directed to a computer implemented method for regulating data consumption in a wireless network:

1) storing an account for each of a plurality of subscribers of the wireless network, *each* account having an upstream and a downstream balance that tracks a wireless network data consumption of the respective subscriber of the wireless network;
2) *imposing a bandwidth limitation* on a subscriber of the wireless network *responsive to either the upstream or downstream balance of the account* of that subscriber of the wireless network dropping below a defined level; and
3) for each account, crediting the balance of the respective account on an intermittent basis.

The claimed method has the ability to keep historical traffic volume information and to act on that information by providing dynamic bandwidth controls based upon the historical volumes. The system allows multiple thresholds for total volume and burst volume and acts differently depending on the threshold(s) reached. That is, users are restricted based upon historical volume of usage rather than on instantaneous usage.

Kiel is directed to a *prepaid* subscriber system with accounting done on each subscriber's system. The system *blocks access* to the network when the subscriber's *prepaid* account is depleted. Kiel states at page 2, paragraph 22, that his invention is fundamentally different from others in that "rather than continuously monitoring the communications activity of a client by

utilizing central system resources the activity is recorded by an activity-monitoring unit that is installed on the client's communications device."

In contrast, the claimed method operates on a central system monitoring a plurality (e.g. thousands) of subscribers. Multiple specific bandwidth rates can be set based on multiple thresholds (upstream, downstream, and burst). Thus, Kiel's system debits prepaid accounts whereas the claimed method accumulates and can carry forward balances.

Moreover, Kiel does not impose bandwidth limitations based on multiple thresholds per client. Kiel simply monitors activities and when, based on billing rules, the prepaid account is depleted, Kiel blocks all communications activity of the client itself.

In contrast, the claimed method provides bandwidth control with separate rates per direction and does not indiscriminately blocking all traffic. That is, for example, if a user exceeds 5GB on the upstream in a week, s/he could be restricted to 100Kbps on the upstream. Simultaneously, s/he could be restricted to 200Kbps on the downstream if 7GB of downstream traffic were received in a week. And, at the same time if s/he bursts to exceed 20 MB in an hour on the downstream, s/he could be restricted to 50Kbps until the average burst is lower than 20Mbps per hour. A similar different burst rate could be applied to the upstream. Further, there are multiple levels of thresholds. A user may be limited to 100Kbps for exceeding 5GB in a week on the upstream, and if s/he exceeds 6GB, s/he could be limited to 10Kbps. Thus, the claimed method can provide multiple levels of thresholds and penalties; and can have different penalties running simultaneously in each direction and in both directions simultaneously with burst overlaying them. This is quite different from Kiel's blocking network access (not bandwidth!) when the prepaid amount is exhausted.

As mentioned above, Kiel does not control bandwidth, but instead blocks access. Kiel does not automatically release the access restriction unless the subscriber has paid more into the prepaid account. Moreover, Kiel does not provide upstream, downstream, and usage information to the user upon request. (Instant claim 10, for example.) Kiel simply notifies the user that s/he is blocked if s/he has exceeded the prepayment amount. S/he does not have the concept of a burst.

A burst is a sliding window measure of bandwidth usage over a moving time period. The claimed method can limit a user's bandwidth if the user sends more than X bytes the previous hour (which continues to move), reducing the limitation dynamically as time passes and his

'burst' is reduced based on time. Kiel can only block access and that is not based on burst, it is based solely on prepaid allowance.

The claimed method allows the user to query his/her balance at any time and a network operator to view all balances including burst, inbound, outbound, and the penalties applied (if any).

Kiel does not provide multiple thresholds per subscriber. Kiel does not provide multiple bandwidth limitations/penalties per subscriber (which operate simultaneously). Kiel does not automatically restore users' bandwidth based on time, only on payment. In addition, Kiel does not offer the option to carry forward previous balances into the next interval as his is a debit system, not a credit system.

Kiel does not teach each and every element of the instant claims. Reconsideration is respectfully requested and a favorable action on the merits is solicited.

CONCLUSION

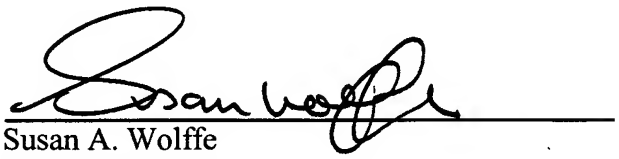
In view of the above remarks, this application is in condition for allowance.

The Commissioner is authorized to charge our Deposit Account No. 19-0733 for any fees associated with this paper or application. A duplicate copy of this sheet is enclosed for accounting purposes.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Date: November 15, 2006

By: 

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